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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 11)
and 13 of the Cable Television)
Consumer Protection and Competition)
Act of 1992)

MM Docket 92-264

Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-trafficking Provisions)REPLY OF BELL ATLANTIC¹

As the Commission has previously concluded, the cable industry historically impeded the development of competing distribution systems by denying access to cable-owned programming, and blocked development of independent programming sources by denying access to monopoly cable systems. Combined with a number of regulatory barriers to entry, these practices allowed cable operators to preserve their local monopolies and to charge exorbitant rates to consumers.

A number of commenters in this proceeding correctly point out, however, that imposing stringent vertical or horizontal ownership limits on cable will do little to address these problems. On the contrary, these problems can best be addressed only if they are tackled directly through, for example,

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company, and New Jersey Bell Telephone Company.

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strict enforcement of the Commission's program access rules, adoption of rules governing the carriage on cable systems of programming from independent providers, and elimination of regulatory barriers to competitive entry.

In fact, to the extent that strict ownership limits result in resources being diverted from these other areas, or deny consumers the benefits of economies of scale or scope, they will serve to undermine the very goals the Commission seeks to achieve. As a result, any rules adopted here should be carefully crafted to ensure that this is not the case.

1. **The Commission Should Make Clear That There Are A Number Of Circumstances In Which Vertical Ownership Limits Should Not Apply To Any Multichannel Competitor**

While the rules proposed here would impose "vertical" ownership limits only on cable, the Commission has previously suggested that it would consider imposing similar limits on telephone companies in instances where they are permitted to provide video programming directly to subscribers.² While the need for such limits on an open common carrier network is

² **See Telephone Company-Cable Television Cross-Ownership Rules, 7 FCC Rcd 5781, 5848 (1992).**

questionable under any circumstances,³ at a minimum, the Commission should make clear that there are a number of instances in which vertical ownership limits should not be applied to any multichannel competitor.

First, the Commission is correct that vertical ownership limits should not apply in areas where effective competition exists between two or more multichannel distributors.⁴ Under these circumstances, independent programmers will have alternative means of distributing their programming, and competing distributors will have strong incentives to ensure that consumers are able to obtain the programming they value -- regardless of source.⁵ This is equally true for telephone companies and cable operators alike.

Second, the Commission is correct that a channel capacity threshold should be established beyond which no vertical

³ If the Commission were to impose vertical limits on telephone companies, moreover, under no circumstances could it impose more stringent limits on telephone companies than on cable. Because telephone companies are common carriers and cable operators are not, if the Commission were to distinguish between the two it could do so only by applying a more stringent limit to cable. As a result, if the Commission adopts its proposed vertical ownership limit of 40 percent for cable operators, it could not arbitrarily apply a more stringent limit to telephone companies.

⁴ See Horizontal and Vertical Ownership Limits, MM Dkt No. 92-264, Report and Order and FNPRM at 78-79 (rel. Jul. 23, 1993) ("Notice").

⁵ Id.

limits will apply to any competitor.⁶ While the commenters in this proceeding support varying thresholds,⁷ the Commission should make clear, at a minimum, that any vertical limits it adopts will not apply where fiber optics, digital signal compression, or other advanced technologies are employed to deliver several hundred channels of capacity. Under these circumstances, there is far more capacity than a single programmer can use, and every reason for a distributor to carry programming from other providers in order to fill its system. As a result, there is simply no reason to impose a vertical limit, and this is doubly true where several hundred channels are made available on a common carrier basis.

Third, no vertical limit should apply to any multichannel distributoe that commits to add distribution capacity in response to increased demand. This will ensure that other program providers are able to obtain distribution capacity to reach consumers, but without requiring distributors to maintain a store of unused capacity.

⁶ Id. at 77-78.

⁷ See, e.g., Comments of NCTA at 17 (36 channels); Comments of Viacom at 5 (54 channels); Comments of Time Warner Entertainment at 22 (75 channels).

2. The Commission Should Establish Horizontal Ownership Limits By Drawing On Established Antitrust Principles

As is noted above, cable operators' market power is a function of the lack of competition in their local service areas and their control over programming -- not the number of subscribers they reach nationally.⁸ In short, horizontal concentraion is not the problem, and imposing stringent limits on the number of homes that any single entity can pass nationally will do nothing to promote competition.⁹ As a result, the Commission will achieve its objective only by devoting its resources to directly addressing the problems that do exist; for example, by strictly enforcing its program access rules and by eliminating other barriers to competitive entry.

Moreover, the 1992 Act only requires the Commission to establish horizontal ownership limits that are "reasonable."¹⁰ The Commission can best do so by defining national limits that are consistent with established antitrust principles.¹¹ While

⁸ See 47 U.S.C. § 533(f)(2) (directing the Commission to "take particular account of the market structure ... including the nature and market power of the local franchise").

⁹ The Commission previously concluded that the cable industry is relatively unconcentrated when measured on a nationwide basis, and that regulatory intervention on this basis is unwarranted. Competition, Rate Deregulation, etc., 5 FCC Rcd 4962, 5006 (1990).

¹⁰ Id. at § 533(f)(1).

¹¹ See, e.g., Comments of NCTA at 7 (and authorities cited therein); Comments of TCI at 15-17 (same).

this may result in limits that are somewhat higher than those proposed by the Commission, it will provide an appropriate balance between ensuring that cable does not become unduly concentrated and allowing consumers to benefit from any economies of scale or scope that may result.¹²

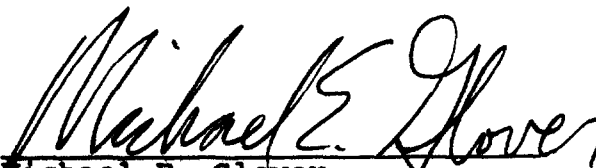
Finally, the Commission is correct that homes in areas where effective competition exists between two or more multi-channel distributors should not be counted against the national limit.¹³ Where true competition is present, there is simply no need to limit the number of customers that particular competitors can serve, either nationally or locally.

¹² 47 U.S.C. § 533 (f)(2) (directing the Commission "to account for any efficiencies and other benefits that might be gained through increased ownership or control").

¹³ Notice at 52.

Respectfully submitted,

Edward D. Young, III
John Thorne
Of Counsel

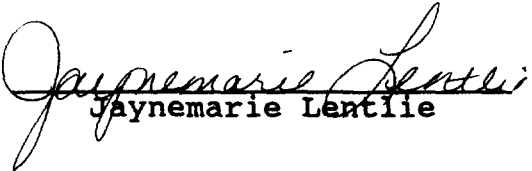

Michael E. Glover
1710 H Street, N.W.
Washington, D.C. 20006
(202) 392-1082

Attorney for the Bell Atlantic
Telephone Companies

September 3, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply of Bell Atlantic" was served this 3rd day of September, 1993, by first class mail, postage prepaid, to the parties on the attached list.


Jaynemarie Lentie

Michael H. Hammer
Laurence D. Atlas
Francis M. Buono
Willkie, Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036-3384

Sam Antar
Kristin C. Gerlach
Capital Cities/ABC, Inc.
77 West 66th Street
New York, N.Y. 10023

David M. Silverman
Robert G. Scott
Cole, Raywid & Braverman
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006

Fritz E. Attaway
Frances Seghers
Motion Picture Association of
America
1600 Eye Street, N.W.
Washington, D.C. 20006

Hank J. Ratner
Rainbow Programming Holdings
150 Crossways Park West
Woodbury, N.Y. 11797

Howard J. Symons
Gregory A. Lewis
Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004

Bertram W. Carp
Turner Broadcasting System, Inc.
820 First Street, N.E.
Washington, D.C. 20004

Bruce D. Sokler
Lisa W. Schoenthaler
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004

Stephen S. Madsen
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, N.Y. 10019

Richard E. Wiley
Lawrence W. Secrest, III
Philip V. Permut
Wayne D. Johnsen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Daniel L. Brenner
Loretta P. Polk
NCTA, Inc.
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036

Seth A. Davidson
Arthur H. Harding
Fleischman & Walsh
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036

David B. Gluck
Mark R. Boyes
Affiliated Regional Communications
600 Las Colinas Boulevard
Suite 2200
Irving, Texas 75039

Jud Colley
Community Broadcasters Association
P.O. Box 9556
Panama City Beach, FL 32407

Judith A. McHale
Barbara S. Wellbery
Discovery Communications, Inc.
7700 Wisconsin Avenue
Bethesda, MD 20814

Donna C. Gregg
Michael K. Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

James E. Meyers
James A. Koerner
Mark J. Palchick
Baraff, Koerner, Olender &
Hochberg
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

Ward W. Wueste, Jr., HQE03J43
Marceil F. Morrell, HQE03J35
GTE Telephone Operations
P.O. Box 152092
Irving, Texas 75015-2092

James R. Hobson
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser
1275 K Street, N.W.
Suite 850
Washington, D.C. 20005-4078

Robert L. Hoegle
Timothy J. Fitzgibbon
Carter, Ledyard & Milburn
1350 I Street, N.W.
Suite 870
Washington, D.C. 20005

Norman M. Sinel
Patrick J. Grant
Stephanie M. Phillips
William E. Cook, Jr.
Bruce A. Henoch
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Benjamin J. Griffin
Matthew J. Harthun
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

William J. Andrle, Jr.
Tribune Regional Programming, Inc.
435 North Michigan Avenue
Chicago, IL 60611

William J. Catto
Haag & Deutschman
452 Pleasant Grove Road
Inverness, FL 34452

David L. Donovan
Association of Independent
Television Stations, Inc.
1200 18th Street, N.W.
Suite 502
Washington, D.C. 20036

Christopher B. Fager
E! Entertainment Television, Inc.
5670 Wilshire Boulevard
Los Angeles, CA 90036

Celeste M. Fasone
State of New Jersey
Board of Regulatory Commissioners
Two Gateway Center
Newark, N.J. 07102

Peter H. Feinberg
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

Paul J. Feldman
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209

Gardner F. Gillespie
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Neal M. Goldberg
Hopkins & Sutter
888 16th Street, N.W.
Washington, D.C. 20006

John L. Grow
New York State Commission on
Cable Television
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12223

Larry M. Haag
Office of the County Attorney
Citrus County
107 N. Park Avenue
Suite 8
Inverness, FL 34450

David A. Irwin
Irwin, Campbell & Crowe
1320 18th Street, N.W.
Suite 400
Washington, D.C. 20036

Louis A. Isakoff
International Family Entertainment
100 Centerville Turnpike
Virginia Beach, VA 23463

David J. Kaufman
Brown, Finn & Nietert
1920 N Street, N.W.
Suite 660
Washington, D.C. 20036

Gene Kimmelman
Consumer Federation of America
1424 16th Street, N.W.
Suite 604
Washington, D.C. 20036

Robert Lemle
Cablevision Systems Corp.
One Media Crossways
Woodbury, N.Y. 11797

W. James MacNaughton
90 Woodbridge Center Drive
Suite 610
Woodbridge, N.J. 07095

Martin T. McCue
USTA
900 19th Street, N.W.
Suite 800
Washington, D.C. 20006-2105

Thomas C. Power
Winston & Strawn
1400 L Street, N.W.
Suite 700
Washington, D.C. 20005

Garret G. Rasmussen
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Thompson T. Rawls, II
BellSouth Telecommunications
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Henry M. Rivera
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Stephen R. Ross
Ross & Hardies
888 16th Street, N.W.
Suite 300
Washington, D.C. 20006

Robert J. Sachs
Continental Cablevision, Inc.
Pilot House, Lewis Wharf
Boston, MA 02110

Paul J. Sinderbrand
Sinderbrand & Alexander
888 16th Street, N.W.
Suite 610
Washington, D.C. 20006-4103

R. Clark Wadlow
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

David Waterman
University of Southern California
Annenberg School for Communications
3502 South Hanover Street
Los Angeles, CA 90089-0281

ITS, Inc. *
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

* BY HAND